IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5437 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JIBAVA AMARSINH VAGHELA

Versus

DY SECRETARY

Appearance:

MR YV BRAHMBHATT for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

MR ANANT S DAVE for Respondent No. 2

RULE SERVED for Respondent No. 3

MR HM PARIKH for Respondent No. 4

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 12/10/2000

ORAL JUDGEMENT

#. The petitioner by this petition under Article 226 of the Constitution of India prays for issuance of a writ of

certiorari or writ of mandamus or any other appropriate writ for quashing the resolution passed by the respondent no.3 and other orders in that regard passed in appeal and revision.

#. The facts giving rise to present petition briefly stated are that the petitioner and respondent no.4 are having their houses in one lane in Raj Falia in village Radhu. Their houses are facing west. According to the petitioner, towards the west his as well as respondent no.4's house, there is a road from north to south. The village people have right to pass & repass by that road. The respondent no.4, however, tried to usurp the road land and have his name entered in the Panchayat record by sophisticated manner. He, therefore, filed an application on 28.6.1981. On 30.6.1981 the respondent no.3 Panchayat passed a resolution inviting objection against the application filed by the respondent no.4. On 3.7.1981, the petitioner filed his objection. He brought it to the notice of the Panchayat that in that regard, he has already filed Regular Civil Suit No.108/1981 in the Court of Civil Judge (J.D.) at Kheda which was pending, and several other objections were raised. On 29.11.1986, the Civil Court at Kheda decreed the suit and granted injunctive relief against the father of respondent no.4 and Devsing Mansing. As per the decree passed, both the defendants are permanently restrained from tethering the buffalo or keeping the tractor or trailer on the road land towards the west and also from using the road land which would be causing obstruction to the petitioner and his persons while passing and repassing by the road. Against the decree, the respondent no.4 had preferred an appeal in the District Court at Nadiad. On 17.4.1990 the appeal was withdrawn. On 30.5.1991 the respondent no.4 again filed second application in the Panchayat -respondent no.3 for getting his name mutated qua the road land on the western side of his house. The respondent no.3 without undergoing any procedure and without inviting the objections, allowed the application of the respondent no.4, and ordered to enter the name of respondent no.4 in the Panchayat record. A resolution to that effect was passed on 3.6.1991. Against that resolution the petitioner preferred an appeal before the appellate committee of District Panchayat, Nadiad. The appeal was allowed and case of the petitioner was accepted. Feeling aggrieved by the decision in appeal the respondent no.4 preferred revision application which came to be allowed on 15.6.1998 by the Deputy Secretary, Panchayat and Rural Development. The decision in appeal rendered on 12.2.1998 was set aside and the resolution of the respondent no.3 passed on 3.6.1991 was restored. It

is against that order the present petition is filed.

#. While assailing the order, the learned advocate representing the petitioner submits that the opportunity of being heard was not given by the Panchayat before the impugned resolution on 3.6.1991 favouring the respondent no.4 was passed. The Panchayat ought to have invited objections from the village people and after considering the objections, if any, ought to have passed necessary resolution. When the opportunity to file the objection was not given, the resolution passed by the Panchayat is bad in law and on that count the same is liable to be quashed.

#. It is the cardinal principle of law that no one can be condemned unheard. Whenever the authority is going to pass the order, it is incumbent upon it to give the opportunity to the persons concerned who are likely to be affected by the order, and after hearing those persons appropriate order can be passed. But if without affording any opportunity the order is passed, the same has to be quashed.

#. In the case on hand perusing the materials before me it appears that the Panchayat respondent no.3 before passing the impugned resolution did not invite the objections from the village people and without undergoing the necessary procedure it passed the resolution favouring respondent no.4. The opportunity of filing the objections and submitting one's case was not given to the petitioner and was condemned unheard and therefore, the resolution passed by the Panchayat is required to be quashed and the Panchayat is required to be directed to consider afresh the application of respondent no.4 by under going the procedure and inviting the objections from the village people and hearing those who have filed their objections. The Panchayat shall also hear the petitioner if the petitioner files the objections.

#. For the aforesaid reasons this petition is allowed. The orders passed by the appellate committee and in revision on 12.2.1998, 15,6,1998 respectively as well as the resolution of the Panchayat dated 3.6.1991 are hereby quashed. The respondent no.3 Panchayat is hereby directed to consider the application of respondent no.4 afresh by inviting the objections, undergoing necessary procedure, and again giving the opportunity of being heard to the petitioner as well as those who file the objections and then to pass appropriate resolution in accordance with law. Rule is made absolute to the aforesaid extent.

kks